

# Exhibit 12

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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

AEQUITAS EQUIPMENT FINANCE, LLC,  
an Oregon limited liability company,

Plaintiff,

v.

VIVATO NETWORKS, INC.; a Delaware  
corporation and VIVATO NETWORKS  
HOLDINGS, INC., a Delaware corporation,

Defendants.

Civil No. **CV '08 -- 750-AC**

**COMPLAINT**

**Demand for Jury Trial**

Plaintiff alleges and complains as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Aequitas Equipment Finance, LLC, ("Aequitas") is an Oregon limited liability company, qualified and licensed to do business in the State of Oregon, and has fulfilled all conditions precedent to maintenance of this action.
2. Defendant Vivato Networks, Inc. ("VNI") is a Delaware corporation, doing business in Oregon.

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**COMPLAINT**  
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3. Defendant Vivato Networks Holdings, Inc. ("VHI") is a Delaware corporation, doing business in Oregon.

4. Jurisdiction is proper in this Court pursuant to 28 USC § 1332 in that there is diversity of citizenship. The amount in controversy exceeds \$75,000 exclusive of costs and interest.

5. Venue is proper in this court pursuant to 28 USC § 1397 because defendants have sufficient minimum contacts with the State of Oregon.

### **FACTUAL ALLEGATIONS**

6. On or about November 30, 2007, VNI entered into a Business Loan Agreement with Aequitas Capital Management, Inc. ("ACM") to borrow money (the "Loan Agreement"). ACM, Aequitas, VNI and Catcher Holdings, Inc. ("Catcher"), a company which intended to acquire VNI, entered into a Loan Assignment and Acceptance (Vivato Networks, Inc.) dated November 30, 2007 ("Loan Assignment"), pursuant to which Aequitas became the Lender under the Loan Agreement and all related loan and security documents. A true and correct copy of the Loan Agreement is attached as Exhibit A and incorporated herein by reference. A true and correct copy of the Loan Assignment is attached as Exhibit B and incorporated herein by reference.

7. In connection with the execution of the Loan Agreement, on or about November 30, 2007, VNI executed a Promissory Note evidencing the loan (the "Note"). A true and correct copy of the Note is attached as Exhibit C and incorporated herein by reference.

8. In connection with the execution of the Loan Agreement, on or about November 30, 2007, VNI executed a Commercial Security Agreement granting Aequitas a security interest in collateral (the "Security Agreement"). A true and correct copy of the Security Agreement is attached as Exhibit D and incorporated herein by reference.

9. On or about November 30, 2007, Aequitas properly perfected its interest in the collateral described in the Security Agreement by filing a financing statement with the Delaware Department of State, U.C.C. Filing Section (the "UCC-1 Perfection Filing"). A true and correct copy of the filing confirmation from Delaware is attached as Exhibit E and incorporated herein by reference.

10. On or about November 30, 2007, Aequitas also filed notification of its security interest in VNI's patent and patent applications by filing with the United States Patent and Trademark Office. A true and correct copy of the confirmation receipt for the USPTO filing is attached as Exhibit F and incorporated herein by reference.

11. Defendant VHI claims an interest in certain of the collateral described in the Security Agreement. However VHI's interest was acquired after Aequitas perfected its interest in the collateral.

12. At the time VHI acquired its interest in the collateral it had actual knowledge of Aequitas' security interest.

13. Under the terms of the Note, VNI was to make monthly interest-only payments each month.

14. VNI has failed to make the required monthly payments and is currently in arrears.

15. Under the terms of the Note, all principal and accrued interest were due and payable on January 30, 2008 (the "Maturity Date").

16. VNI has failed to make the required payments on the Maturity Date and is currently in default.

17. VNI is in default under the terms set forth in the Note and Security Agreement and pursuant to the terms of the Note and Security Agreement, the entire unpaid balance of the Note is due and payable.

18. After allowances for all just credits, there remains due and owing to Aequitas



from VNI the unpaid amount of the principal sum plus interest, costs, and attorneys' fees as provided by the Loan Agreement, the Note, and the Security Agreement.

19. The interest of VNI and VHI in the collateral is inferior, subordinate and subject to Aequitas' lien.

### **FIRST CLAIM FOR RELIEF**

#### **(Breach of Contract as to VNI Only)**

20. Aequitas alleges and incorporates herein the allegations in paragraphs 1 through 19.

21. VNI is in breach of the Loan Agreement and the Note.

22. Accordingly, VNI is liable to Aequitas for all amounts unpaid on the Note, plus interest, costs and for attorneys' fees as provided by the Loan Agreement, the Note, and the Security Agreement.

23. Aequitas is also entitled to conduct a foreclosure sale of the collateral covered by the Security Agreement.

### **SECOND CLAIM FOR RELIEF**

#### **(Declaratory Judgment as to VHI Only)**

24. Aequitas alleges and incorporates herein the allegations in paragraphs 1 through 21.

25. Aequitas perfected its security interest in the collateral described in the Security Agreement and the UCC-1 Perfection Filing before VHI acquired its interest in the collateral.

26. On information and belief, VHI disputes that Aequitas' security interest is superior to VHI's security interest.

27. As a result, there is a real case and controversy.

28. Accordingly, Aequitas is entitled to a Declaratory Judgment that its security

interest is superior to VHI's in interest in the collateral.

WHEREFORE, for the reasons set forth above, and for such other reasons as may be presented hereafter, Aequitas prays for:

1. Entry of a judgment against VNI in an amount of all compensatory damages together with interest thereon;
2. Entry of a judgment against VNI for an award of Aequitas' attorney's fees together with costs and Aequitas' costs and disbursements herein;
3. Entry of a judgment declaring that Aequitas' security interest in the collateral is a valid first lien upon the collateral described in the Security Agreement and UCC-1 Perfection Filing;
4. Entry of a judgment that Aequitas' lien be foreclosed and the property covered thereby be sold at foreclosure sale in the manner provided by law, and the proceeds thereof applied on the judgment;
5. Entry of judgment declaring that VHI's interest in the collateral is inferior and subordinate to Aequitas' security interest;
6. An award of prejudgment interest and post-judgment interest as allowed by law; and
7. Other and further relief as the Court deems just and proper.

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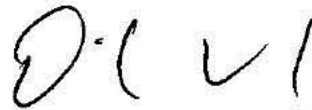
**DEMAND FOR TRIAL BY JURY**

Aequitas hereby makes demand for trial by jury on all claims so triable.

DATED this 20th day of June, 2008.

BULLIVANT HOUSER BAILEY PC

BY

  
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